



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

February 16, 2023

BY ECF

Hon. John G. Koeltl
United States District Judge
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *Kunstler et al. v. Central Intelligence Agency et al.*, No. 22 Civ. 6913 (JGK)

Dear Judge Koeltl:

I write respectfully on behalf of defendants the Central Intelligence Agency (“CIA”) and Michael R. Pompeo, the former Director of the CIA (together, the “Federal Defendants”), to request a one-month extension of time for their anticipated motion to dismiss the plaintiffs’ amended complaint.

At the pre-motion conference on January 20, the Court gave plaintiffs until January 27 to amend their complaint and set February 17 as the deadline for the defendants to move to dismiss any amended complaint. ECF No. 26. The amended complaint includes a new claim against the CIA directly under the Fourth Amendment, ECF No. 27, ¶¶ 57-59, as opposed to the original complaint, which improperly made a claim against the CIA under the doctrine of *Bivens v. Six Unknown Named Agents*, 402 U.S. 388 (1971), ECF No. 1, ¶ 51. We require additional time to evaluate this new claim, as it raises different issues than plaintiffs’ original *Bivens* claim. See *FDIC v. Meyer*, 510 U.S. 471, 486 (1994) (“An extension of *Bivens* to agencies of the Federal Government is not supported by the logic of *Bivens* itself.”). The additional time is also needed due to the press of business, as the undersigned is filing two substantial briefs in other cases this week.

Because I will be out of the Office for most of the week of March 6-10, I respectfully request that the Court extend the deadline for the Federal Defendants to file their motion to dismiss the amended complaint from February 17 to March 17, 2023, and adjust the remainder of the briefing schedule accordingly.

Plaintiffs do not consent to the requested extension, and have asked that we provide the following explanation for their position:

Unfortunately, we cannot agree to yet another delay. To rewind the clock, your clients were in default and the Court, on December 7, 2022 graciously granted your clients until January 13, 2023 in which to appear, answer or otherwise move with respect to the Complaint. On that date, rather than do any of the above, you sent a letter asking the Court to allow you to make a motion. We then had a

conference and Plaintiffs timely filed its Amended Complaint. Your clients then had until February 17, 2023 on which to appear, answer or otherwise move. You are now asking for yet another four weeks to do so.

In brief response to the above, the Federal Defendants reiterate that, as explained in their pre-motion conference letter, ECF No. 23, at 1 n.1, they were not in default of their time to respond to the complaint when the Court *sua sponte* extended the deadline for them to do so, ECF No. 21, as 60 days had not yet elapsed from the dates of service, pursuant to Federal Rule of Civil Procedure 12(a)(2) and (3). The Federal Defendants further note that they submitted a pre-motion conference letter rather than a motion to dismiss on the deadline for responding to Plaintiffs' original complaint in accordance with Section II.B of this Court's Individual Practices.

I thank the Court for its consideration of this request.

Respectfully,

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